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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/438,645 | 11/12/1999 | BRIAN GARRY JENKIN | JA999-715 | 9655 |

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EXAMINER

TODD, GREGORY G

ART UNIT PAPER NUMBER

2157

DATE MAILED: 10/23/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/438,645

Applicant(s)

JENKIN, BRIAN GARRY

Examiner

Gregory G Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

This is a first office action in response to application filed, with the above serial number, on 12 November 1999 in which claims 1-27 are presented for examination. Claims 1-27 are therefore pending in the application.

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to because figure 3 is illegible. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "1" has been used to designate more than one element. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to because figures 2, 3, and 5 do not have corresponding reference numbers. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The abstract of the disclosure is objected to because reference numbers should not be included and referred to in the abstract. Correction is required. See MPEP § 608.01(b).
6. The disclosure is objected to because of the following informalities: On page 5, line 7, "two" is suggested to be replaced with "too"; On page 6, line 14, "The of live" is not proper; On page 2, line 12, "Application No." should read --Publication No.--. Appropriate correction is required.

Claim Objections

7. Claim 23 objected to because of the following informalities: In line 27, "executes" is suggested to be replaced with --executes.--. Appropriate correction is required.
8. Claim 9 is objected to because of the following informalities: The claim improperly progresses from step (a) to step (c). Appropriate correction is required.
9. Claims 19 and 22 are objected to because of the following informalities: The term "datastore" does not correlate to the disclosure. Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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11. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The "output" the server produces is not disclosed in the specification and the limit is not represented in any way to be determined by one skilled in the art.

12. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 is dependant on claim 20, which recites identical limitations.

13. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant's terminology of "live maps" is not reasonably defined to enable one skilled in the art to limit the term.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application

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being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

15. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (hereinafter "Wang", 6,446,028).

16. As per Claim 1, Wang discloses a method for testing server performance, wherein Wang discloses:

(a) forming a collection of live maps (packets sent real-time) for a plurality of transactions for a chosen computing application (at least col. 2, lines 6-16; col. 5, lines 9-26);

(b) transmitting a processing load, constituted by a plurality of maps for a plurality of transactions, to a server running computing application (server processing request consisting of multiple packets) (at least Fig. 6; col. 6, lines 48-63);

(c) measuring one or more performance criteria for server as it executes load (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30).

17. As per Claims 2 and 7.

(d) varying processing load by making changes to the number of maps and the mix of transactions transmitted to server (processing additional database queries) (at least col. 8, lines 21-31);

measuring step (c) is repeated for each individual processing load (each response packet is measured) (at least col. 2, lines 6-16).

18. As per Claim 3.

(e) comparing performance criteria against predetermined performance measures to determine whether server's capacity is satisfactory (overall performance monitoring) (at least col. 1, lines 31-46, 56-60; col. 4, lines 28-32).

19. As per Claim 4.

performance criteria include average response time for a transaction within a load (approximate total transit time) (at least Fig. 7; col. 2, lines 17-29).

20. As per Claim 5.

performance criteria include the proportion of server CPU time taken by each transaction of load (server processing time) (at least Fig. 7; col. 7, lines 19-30).

21. As per Claim 6, Wang discloses a method for testing server performance wherein Wang discloses:

(a) forming a collection of live maps for a plurality of transactions for a chosen computing application (at least col. 2, lines 6-16; col. 5, lines 9-26);

(b) transmitting a processing load, constituted by a plurality of maps for a plurality of transactions, from a workstation to a server running computing application (server processing request consisting of multiple packets) (at least Fig. 6; col. 6, lines 48-63);

(c) for each transaction within load, returning a result to workstation (at least Fig. 5);

(d) measuring, at workstation, one or more performance criteria based on execution of load by server (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30).

22. As per Claim 8.

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performance criteria include average response time from workstation-to-server-to-workstation for a transaction within a load, and/or the proportion of CPU time of server taken by each transaction of load (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30).

23. As per Claim 9, Wang discloses a method for testing server performance wherein Wang discloses:

(a) forming a collection of live maps for a plurality of transactions for a chosen computing application (at least col. 2, lines 6-16; col. 5, lines 9-26);

(b) transmitting a processing load, constituted by a plurality of maps for a plurality of transactions, to a server running computing application (server processing request consisting of multiple packets) (at least Fig. 6; col. 6, lines 48-63);

(c) varying processing load by making changes to the number of maps and the mix of transactions transmitted to server (processing additional database queries) (at least col. 8, lines 21-31);

(d) measuring one or more performance criteria as server executes load (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30).

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claims 10-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (hereinafter "Wang", 6,446,028) in view of Chen et al (hereinafter "Chen", 5,812,780).

26. As per Claim 10, Wang discloses a system for testing server performance, wherein Wang discloses:

(b) a server running chosen application (at least col. 3, lines 43-47);

(c) a communications connection between workstation and server (at least col. 3, lines 43-47);

workstation is operable to transmit a processing load to server, via communications connection, constituted by a plurality of maps for a plurality of transactions, and server measures one or more performance criteria as it executes load (at least Fig. 6, 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 6, lines 48-63).

Wang fails to explicitly disclose (a) a workstation sized to represent a plurality of individual client computing stations, workstation including a data store of a collection of live maps for a plurality of transactions for a chosen application. However, the use and advantages for using such a simulation model is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Chen. Chen discloses a single computer/workstation acting as multiple systems and requests under a simulation (at least Chen col. 4, lines 34-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Chen's single workstation representation with Wang's collection of live maps (at least

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Wang col. 2, lines 6-16; col. 5, lines 9-26) because this would ease the process of testing server performance by having a single system acting as multiple systems when multiple systems are not an alternative due to expenses or unforeseen client expansion.

27. As per Claims 11 and 23.

workstation is further operable to vary processing load by making changes to the number of maps and the mix of transactions that are transmitted to the server, and server measures performance criteria for each load it executes (process additional database queries) (at least col. 8, lines 21-31).

28. As per Claims 12 and 24.

server compares measured performance criteria against predetermined performance measures to determine whether its capacity is satisfactory (overall performance monitoring) (at least col. 1, lines 31-46, 56-60; col. 4, lines 28-32).

29. As per Claims 13 and 25.

server maintains a data store of performance data measures (measurement database) (at least Fig. 9).

30. As per Claim 14.

server produces an output representing performance data measures (server measurement stub code) (at least Fig. 3).

31. As per Claims 15 and 26.

performance data criteria includes the average response time for a transaction within load (approximate total transit time) (at least Fig. 7; col. 2, lines 17-29).

32. As per Claims 16, 20, 21, and 27.

performance data criteria includes the proportion of server CPU time taken by each transaction of load (server processing time) (at least Fig. 7; col. 7, lines 19-30).

33. As per Claim 17.

application server has connection to one or more database servers, database servers executing portions of load transactions (at least Fig. 5, 9).

34. As per Claim 18.

application server is formed by a plurality of servers, and each of server plurality has connection to one or more database servers, database servers executing portions of load transactions (at least Fig. 5, 9; col. 11, lines 1-2).

35. As per Claim 19, Wang discloses a system for testing server performance, wherein Wang discloses:

(b) a server running chosen application (at least col. 3, lines 43-47);

(c) a communications connection between workstation and server (at least col. 3, lines 43-47);

wherein workstation is operable to transmit a processing load to server, via communications connection, constituted by a plurality of maps for a plurality of transactions, and workstation (client measurement stub code) measures one or more performance criteria of server as server executes load (at least Fig. 3, 6, 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 6, lines 48-63).

Wang fails to explicitly disclose (a) a workstation sized to represent a plurality of individual client computing stations, workstation including a data store of a collection of

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live maps for a plurality of transactions for a chosen application. However, the use and advantages for using such a simulation model is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Chen. Chen discloses a single computer/workstation acting as multiple systems and requests under a simulation (at least Chen col. 4, lines 34-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Chen's single workstation representation with Wang's collection of live maps (at least Wang col. 2, lines 6-16; col. 5, lines 9-26) because this would ease the process of testing server performance by having a single system acting as multiple systems when multiple systems are not an alternative due to expenses or unforeseen client expansion.

36. As per Claim 22, Wang discloses a system for testing server performance, wherein Wang discloses:

- (b) a server running chosen application (at least col. 3, lines 43-47);
- (c) at least one database in communication with server (at least Fig. 5, 9);
- (d) a communications connection between workstation and server (at least col. 3, lines 43-47);

wherein workstation is operable to transmit a processing load for database to server via communications connection, and server measures one or more performance criteria as load is executed (at least Fig. 6, 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 6, lines 48-63).

Wang fails to explicitly disclose (a) a workstation sized to represent a plurality of individual client computing stations, workstation including a data store of a collection of live maps for a plurality of transactions for a chosen application. However, the use and advantages for using such a simulation model is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Chen. Chen discloses a single computer/workstation acting as multiple systems and requests under a simulation (at least Chen col. 4, lines 34-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Chen's single workstation representation with Wang's collection of live maps (at least Wang col. 2, lines 6-16; col. 5, lines 9-26) because this would ease the process of testing server performance by having a single system acting as multiple systems when multiple systems are not an alternative due to expenses or unforeseen client expansion.

Conclusion

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baghai et al, Caccavale et al, Davies et al, Sherman et al, Chen et al, Wagle, Dantressangle, Braddy, Congdon, Hoyer et al, Eilert et al, and Richardson are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G Todd whose telephone number is (703)305-5343. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703)308-7562. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-9153 for regular communications and (703)305-7201 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

gt
October 18, 2002


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100